

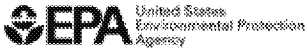


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About Assumption

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What is Assumption?

Section 404 of the Clean Water Act requires a permit before dredged or fill material may be discharged into waters of the United States. Section 404(g) of the Clean Water Act gives states and tribes the option of assuming, or taking over, the permitting responsibility and administration of the Section 404 permit program for certain waters. Thus, Section 404 permits for those waters would be issued by the state or tribe instead of the U.S. Army Corps of Engineers (Corps). The Corps retains permitting authority in waters currently used as a way transport interstate or foreign commerce (e.g. transporting soybeans from Iowa to China via barges on the Mississippi River).

- [Learn more about the Section 404 permitting program](#)

What Laws and Regulations Relate to Assumption?

In amendments to the CWA in 1977 and 1987, Congress gave states and tribes the ability to assume responsibility for part of the Clean Water Act (CWA) Section 404 permit program. The amendments require EPA to approve or deny a state's or tribe's request to assume the permit program, to oversee operation of the assumed program, and to coordinate federal review of state or tribal permit actions. EPA can also withdraw program approval if the assumed program does not comply with applicable statutes and regulations ([U.S.C. 33 1344\(g-i\)](#)).

In 1988, EPA revised the regulations ([40 CFR 233](#)) that spell out criteria and procedures for approving, reviewing, and withdrawing approval of a state or tribal Section 404 program. To assume the Section 404 permitting program, the state or tribe needs to have a dredged and fill regulatory program. An assumed program operates under state or tribal law; a state or tribe must have its own laws that

authorize the program and meet the requirements to ensure permits comply with the environmental review criteria known as the CWA Section 404(b)(1) Guidelines and other Clean Water Act requirements.

What are the General Requirements for an Assumed State or Tribal Program?

An assumed program must be consistent with and no less stringent than the requirements of the Clean Water Act and its regulations. The program must cover all waters of the United States; regulate at least the same activities as the federal Section 404 program; allow the public to participate; be able to issue permits consistent with the environmental review criteria known as the CWA Section 404(b)(1) Guidelines; and have adequate enforcement authority as specified in the regulations. States and tribes may develop programs that reach beyond the jurisdiction of the CWA, and can regulate activities more broadly than the CWA would (such as draining wetlands). However, EPA does not oversee this broader program scope.

States and tribes assume permitting authority over certain waters but others are retained under the jurisdiction of the Corps. The waters retained by the Corps include those that may be used in interstate or foreign commerce and tidal waters.

Why would States or Tribes Consider Assuming the Section 404 Program?

Under an assumed program, Section 404 permit applicants may need only a single state or tribal permit for dredged or fill material discharges. Since more than a dozen states and tribes are currently administering dredged and fill programs separate from the federal program, assuming the Section 404 program allows states and tribes to streamline the review process and reduces unnecessary paperwork and duplication. Additionally, state and tribal regulators are usually located closer to proposed activities and can be more familiar with local resources, issues, and needs. An efficient state- or tribal-run program can help reduce construction delays and save money for permit applicants. States and tribes can also integrate dredged and fill permitting with traditional water quality programs, such as monitoring and water quality standards, or state/tribal land use planning requirements.

How does the Assumption Process Work?

States or tribes should work with their EPA Regional Office “early and often” during the preparation of the 404 assumption package to ensure it is complete. Once the package is complete, the package goes through a 120-day review process, as specified in 40 CFR 233.15 and shown in this review process diagram. To ensure that the assumption request package can be approved within the timeline, states or tribes are encouraged to coordinate with all parties during the development of the package before official submission.

- [Learn more about the assumption process](#)

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